



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200935047

JUN 04 2009

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

SET: EP: RA: T1

Control Number:

Legend:

Taxpayer =

IRA A =

Financial Institution B =

Account C =

IRA D =

Financial Institution E =

Financial Institution F =

Individual G =

Amount 1 =

Amount 2 =

State H =

State I =

Dear :

This letter is in response to a request for a private letter ruling dated May 20, 2008, as supplemented by additional correspondence received by facsimile on July 22, and October 9, 2008, and June 3, 2009, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3)(I) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer, age 74, represents that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code of the distribution of Amount 1 from IRA A and Amount 2 from IRA D was due to her having to care for her father during the 60-day rollover period. Taxpayer further represents that neither Amount 1 nor Amount 2 has been used for any purpose.

Taxpayer maintained IRA A with Financial Institution B and IRA D with Financial Institution E under section 408(a) of the Code. On July 25, 2007, Taxpayer liquidated IRA A and transferred the proceeds (Amount 1) to Account C, a non-IRA account, also maintained with Financial Institution B. In addition, on August 20, 2007, Taxpayer took a distribution totaling Amount 2 from IRA D, and transferred Amount 2 to an account with Financial Institution F. Taxpayer intended for Amounts 1 and 2 to remain in an IRA.

In August of 2007, Taxpayer was informed her father (Individual G) had been hospitalized and required surgery due to a fractured spine. He required several medical procedures including a second surgery. Taxpayer traveled from State H to State I where she remained until early October of 2007 when her father was transferred to a nursing home. During this period, she spent almost all of her time dealing with his medical problems and eventual admission to a nursing home.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in Code section 408(d)(3) with respect to the distributions of Amounts 1 and 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer is consistent with her assertion that her failure to accomplish a timely rollover of Amounts 1 and 2 was due to her having to care for her father during the 60-day rollover period which impeded her ability to accomplish a timely rollover.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA A and Amount 2 from IRA D. Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amounts 1 and 2 into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amounts 1 and 2 will be considered rollover contributions within the meaning of section 408(d)(3).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact
(I.D. # , at ()

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437